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15 *Attorneys for Plaintiff*

16 **UNITED STATES DISTRICT COURT**

17 **DISTRICT OF NEVADA**

18 N.S., a minor, by and through his guardian
19 ad Litem, JILLIAN CORTEZ and ROMEO SMITH, as
20 Special Administrator of the Estate NIKO LAROME
21 SMITH,

22 Plaintiff(s),

23 vs.

24 WASHOE COUNTY DEPUTY BRANDON WOOD,
25 WASHOE COUNTY DEPUTY EMMANUEL
26 FIGUEROA, and WASHOE COUNTY SERGEANT
27 COREY A. SOLFERINO,

28 Defendants.

Case No: 3:17-cv-00133-MMD-WGC

**STIPULATION AND ORDER FOR
DISMISSAL**

COMES NOW, Plaintiffs N.S., a minor, by and through his guardian ad Litem,
JILLIAN CORTEZ and ROMEO SMITH, as Special Administrator of the Estate NIKO
LAROME SMITH and Defendants WASHOE COUNTY DEPUTY BRANDON WOOD,

1 WASHOE COUNTY DEPUTY EMMANUEL FIGUEROA, and WASHOE COUNTY
2 SERGEANT COREY A. SOLFERINO and hereby respectfully request that this matter be
3 dismissed.

4 NIKO LAROME SMITH passed away on August 29, 2015 as a result of an incident
5 that occurred at the Washoe County Jail. On February 24, 2017 the Probate Court for the
6 Second Judicial District Court ("Probate Court") issued an Order Appointing Special
7 Administrator (Attached hereto as Exhibit 1) appointing ROMEO SMITH as Special
8 Administrator of the Estate of NIKO LARMOME SMITH, and which required ROMEO
9 SMITH to seek approval for any settlement from the Probate Court. On March 2, 2017,
10 ROMEO SMITH as Administrator of the Estate of the decedent, and N.S.'s parent and
11 natural guardian JILLIAN CORTEZ, commenced litigation against several Washoe County
12 Sheriff's Deputies involved in the incident at the Washoe County Jail in this District.

13 On April 27, 2017, a settlement conference was held in before the Honorable
14 Magistrate Judge Robert A. McQuaid, Jr., in which the parties reached a compromise to settle
15 the matter of the claims of the Estate of NIKO LAROME SMITH and of N.S. related to
16 NIKO LAROME SMITH's death. The Defendant deputies were represented by Washoe
17 County Deputy District Attorney Michael Large. The parties reached the settlement attached
18 hereto as Exhibit 2. The Washoe County Commission approved the settlement agreement at a
19 regularly scheduled meeting held on June 13, 2017.

20 On June 16, 2017 ROMEO SMITH filed a Petition for Leave to Set Aside Estate
21 Without Administration and to Compromise the Claim of a Minor as required by NRS 41.200
22 with the Probate Court. On July 13, 2017, the Probate Court issued an Order (Attached
23 hereto as Exhibit 3) in Docket No. PR17-00074 approving the settlement agreement and
24 directing counsel to file a petition with the Probate Court to set aside the estate of the
25 decedent. On July 13, 2017, the undersigned counsel for the Plaintiff filed the petition to set
26 aside the estate as directed by the Probate Court.
27
28

1 WHEREFORE, the parties stipulate and respectfully request that this matter be
2 dismissed with prejudice.

3
4
5 Dated this 18th day of July, 2017.

6
7 By: /s/ Michael Large

8 Michael Large
9 Deputy District Attorney
10 P.O. Box 30083
11 Reno, NV 89520-3083

12 By: /s/ Luke Busby

13 Luke Busby
14 Nevada State Bar No. 10319
15 216 East Liberty St.
16 Reno, NV 89501
17 775-453-0112
18 luke@lukeandrewbusbyltd.com

19
20 IT IS SO ORDERED.

21 
22 UNITED STATES DISTRICT JUDGE

23
24 DATED: July 19, 2017

Exhibit List

1. Order Appointing Romeo Smith
2. Settlement Agreement
3. Probate Court Order

Exhibit 1

Exhibit 1

Electronically
PR17-00074
2017-02-24 10:13:18 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5965893

2735

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF THE ESTATE OF

Case No. PR17-00074

NIKO LAROME SMITH,

Dept. No.: PR

Deceased.

ORDER APPOINTING SPECIAL ADMINISTRATOR

Upon submission of a verified *Ex Parte* Petition for Special Letters of Administration, and a Supplement to *Ex Parte* Petition for Letters of Special Administration, representing as follows:

1. That NIKO LAROME SMITH died on August 29, 2015, and at the time of his death was a resident of the County of Washoe, State of Nevada.
2. That decedent's brother, ROMEO SMITH, is willing to serve as Special Administrator. ROMEO SMITH is over the age of eighteen, has not been convicted of a felony and is otherwise qualified to serve as Special Administrator of the Estate of NIKO LAROME SMITH.
3. That ROMEO SMITH requires Letters of Special Administration for the authority to commence a wrongful death suit.

Therefore, based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that the Petition be GRANTED and that said ROMEO SMITH is hereby appointed as Special Administrator of the Estate of NIKO LAROME SMITH, to prosecute any action, proceeding or claim on behalf of the Estate of NIKO

1 LAROME SMITH arising from his death on August 29, 2015; that Letters of Special
2 Administration be issued to said Petitioner, ROMEO SMITH, upon taking the oath of
3 office, and posting bond in the amount of \$ 0. Petitioner shall have and
4 exercise all the powers and duties conferred by NRS 140.040, and shall specifically
5 have the authority to access the decedent's medical records.

6 IT IS HEREBY FURTHER ORDERED that any money received by the Estate of
7 NIKO LAROME SMITH shall be placed in the attorney's trust account until further
8 order of the Court.

9 IT IS HEREBY FURTHER ORDERED that the settlement of any claims or lawsuits
10 prosecuted by the Estate of DECD be subject to this Court's approval.

11 IT IS HEREBY FURTHER ORDERED that the Special Administrator shall file an
12 annual status report with the Court, advising the Court of the status of the litigation
13 and addressing the necessity for the continuation of the special administration. The
14 annual status report is due on the anniversary of the Special Administrator's
15 appointment.

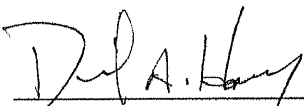
16 IT IS HEREBY FURTHER ORDERED that the Special Administrator shall cause a
17 copy of this Order to be served upon the heirs and devisees of the decedent.

18 DATED this 23rd day of February, 2017.

19 IT IS SO RECOMMENDED:

20 
21 PROBATE COMMISSIONER

22 IT IS SO ORDERED:

23 
24 DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. PR17-00074

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 24th day of February, 2017, I electronically filed the **ORDER APPOINTING SPECIAL ADMINISTRATOR** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

LUKE BUSBY, ESQ. for ROMEO SMITH

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]



Brandon Smith

Exhibit 2

Exhibit 2

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (hereinafter "Agreement") is made and entered into by and between Plaintiffs Romeo Smith, and Special Administrator of the Estate of Niko Smith, and N.S., a minor by and through his guardian Jillian Cortez, (hereinafter referred to as "Plaintiffs") and Defendants, Washoe County Deputies Brandon Wood and Emmanuel Figueroa, and Washoe County Sergeant Corey Solferino (hereinafter referred to as "Defendants").

WHEREAS, Plaintiffs filed a lawsuit in the United States District Court of Nevada against Defendants in an action numbered 3:17-CV-00133-MMD-WGC";

WHEREAS, Romeo Smith was appointed Special Administrator of the Estate of Niko Smith in Docket No. PR17-00074 before the Probate Court of the Second Judicial District Court in and for Washoe County ("Probate Court");

WHEREAS, the parties desire to resolve and settle all existing claims concerning the issues that, as of the date of this Agreement, have been and could have been raised in the Litigation and concerning all matters, its subject matter and any and all disputes relating to the action.

NOW, THEREFORE, in consideration of the mutual covenants and promises and other good and valuable consideration set forth herein, Plaintiff and Defendants agree as follows:

1. SETTLEMENT PAYMENT AND RELEASE OF CLAIMS: For and in consideration of the payment of Seventy-Five Thousand Dollars and Zero Cents (\$75,000) to Plaintiffs by Defendants, by signature to this Agreement, the parties agree to fully and forever releases, acquits and discharges, as well as their administrators, agencies, agents, assignees, attorneys, contractors, departments, directors, divisions, employees, employers, executors, heirs, insurers, officers, principals, representatives, servants, subrogees, subsidiaries, successors, and spouses, of and from any and all attorney's fees, causes of action, claims, costs, damages, expenses, indemnities, liabilities, and obligations of every kind and nature, in law, equity or otherwise, filed or otherwise, presently known and unknown, suspected and unsuspected, disclosed and undisclosed, which they now have against Defendants by reason of any injury, loss and damages, actual and consequential, arising out of or in any way related to the subject of the Litigation,

The aforementioned payment will be satisfied by a check to payable jointly to Plaintiffs and his counsel of record, Terry Keyser-Cooper and Luke Busby, within 7 days of execution of this Agreement.

2. DISMISSAL OF ACTIONS WITH PREJUDICE: This Agreement is expressly contingent upon the Plaintiffs' dismissal with prejudice of the underlying Complaint against Defendants and the entire Litigation. Subsequent to the approvals required in Section 13 below,

Each party to the Litigation shall execute a Stipulation for Dismissal With Prejudice, dismissing all claims of all parties asserted in the Litigation, and providing that each party shall bear its own costs and attorney's fees.

3. NO ADMISSIONS: It is understood and agreed by the parties hereto that this Agreement represents a compromise settlement of various matters, and that the promises of payment made in consideration of this Agreement shall not be construed to be an admission of any liability or obligation by any party hereto.

4. OTHER BENEFITS: Except as specifically set forth in this Agreement, the Plaintiff shall be entitled to no other benefits or other remuneration or compensation in settlement of his claims arising from and related to the matters that have and could have been raised in the Litigation, and concerning all matters relating to its subject and any disputes between the Plaintiff and Defendants.

5. ATTORNEY'S FEES AND COSTS: Each party shall pay its own attorney's fees and costs arising out of or in any way related to and or connected with the Litigation.

6. ASSIGNMENT: The parties hereto represent that they have not previously assigned any claims, demands, actions and or causes of action arising out of or in any way related to the Litigation.

7. CONSTRUCTION OF AGREEMENT: Each party to this Agreement has participated in the preparation and drafting of this Agreement. As such, the parties acknowledge that any doctrine of law which may operate to imply any ambiguity in this Agreement against any party hereto as the profferor of the Agreement is not applicable to this Agreement. Accordingly, this Agreement shall be interpreted as if the parties jointly and equally prepared and drafted each word, sentence and paragraph hereto.

8. APPLICABLE LAW: This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of Nevada, as applied to contracts made and to be performed entirely within Nevada. The parties hereto consent to the exclusive jurisdiction of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe for the enforcement of this Agreement.

9. SUCCESSORS AND ASSIGNS: This Agreement shall inure to the benefit of each party and their affiliates, agencies, agents, assigns, contractors, departments, divisions, heirs, officers, directors, employees, independent representatives, parent corporations, partners, personal representatives, servants, shareholders, spouses, subsidiary corporations, and successors.

10. SEVERABILITY: The illegality or invalidity of any provision or portion of this Agreement shall not effect the validity of the remainder of the Agreement and this Agreement

shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

11. ENTIRETY OF AGREEMENT: The parties hereto have carefully read this Agreement in its entirety before signing the same, and it is understood by the parties hereto that this Agreement constitutes the entire Agreement of the parties hereto and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. This Agreement contains the entire agreement between the parties hereto and all the terms and provisions of this Agreement are contractual and are not merely recitals. This Agreement was signed and executed voluntarily and without reliance upon any statement or representation not specifically set forth in this Agreement. No modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

12. AUTHORITY TO EXECUTE: The parties hereto represent that they have the authority to execute this Agreement on behalf of the persons and entities on whose behalf they are signing. The parties hereto further represent that the signatures on this Agreement are the genuine, usual and customary signatures of the persons executing this Agreement and are fully binding on such persons and entities, and each person signing is legally and mentally competent to sign this Agreement and is fully authorized by law to bind himself or the principal on whose behalf he is signing.

13. COURT APPROVAL REQUIRED: The Parties acknowledge and agree that this Agreement is subject to the review and approval of the United States District Court or the Second Judicial District Court for compromise of the claim of a minor pursuant to NRS 41.200 and the Probate Court pursuant to the Probate Court's February 24, 2017 Order appointing Romeo Smith as Special Administrator of the Estate of Niko Smith.

(signatures on following page)

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WHEREFORE, THE FOLLOWING PERSONS FREELY AND VOLUNTARILY SIGN THIS AGREEMENT ON THE DATES INDICATED BELOW:

DATED this 5/15/17 day of May, 2017.




Romeo Smith, as Special Administrator of the Estate of Niko Smith



Jillian Cortez, as Guardian Ad Litem of N.S.


APPROVED AS TO FORM AND CONTENT:

Dated this 14 day of June, 2017.



Terri Keyer-Cooper, counsel for Plaintiff

DATED this _____ day of _____, 2017.



Robert Lucey,
Chairman - Washoe County Board of County Commissioners

APPROVED AS TO FORM AND CONTENT:

Dated this 13th day of June, 2017.

Christopher J. Hicks
Washoe County District Attorney

By: 

Michael W. Large
Deputy District Attorney
Attorneys for Defendants

Exhibit 3

Exhibit 3

1 **2777**

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5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 In the Matter of the Estate of Case No. PR17-00074
9 NIKO LAROME SMITH, Dept. No. PR
10 Deceased.
11 _____/

12 **ORDER AUTHORIZING SPECIAL ADMINISTRATOR TO ACCEPT SETTLEMENT**
13 **OF ESTATE CLAIM; ORDER FOR FURTHER PROBATE PROCEEDINGS**

14 The Court has reviewed the *Petition for Leave to Set Aside Estate Without*
15 *Administration and to Compromise Claim of Minor* filed on June 16, 2017, and
16 submitted for decision on June 29, 2017, by ROMEO SMITH, the duly-appointed
17 Special Administrator of the Estate of NIKO LAROME SMITH, by and through his
18 counsel LUKE ANDREW BUSBY, ESQ.
19

20 The Court hereby FINDS and ORDERS as follows:

21 1. The settlement by the Special Administrator with Washoe County
22 Deputies Brandon Wood and Emmanuel Figueroa and Washoe County Sergeant
23 Corey Solferino of the Decedent's wrongful death claim for the sum of \$75,000.00,
24 payable in favor of the Estate, is APPROVED.
25

26 2. That, from the settlement proceeds, \$29,600.00 shall be paid to the Law
27 Office of Terri Keyser-Cooper and Luke Andrew Busby, Ltd. as and for attorney's
28 fees and costs.

1 3. That the Special Administrator shall pay, from the settlement proceeds,
2 the following costs: Gilbert Coleman, Ph.D. - \$2,400.00; Romeo Smith - \$400.00.

3 4. That the remaining requests in the Petition must be DENIED, since the
4 value of the remaining Estate is greater than \$25,000.00 and therefore requires
5 probate proceedings.

6 5. That since the value of the Estate does not apparently exceed \$100,000,
7 Petitioner may proceed with a formal Petition to Set Aside Estate Without
8 Administration pursuant to NRS Chapter 146.070, wherein a hearing is requested
9 and all proper parties, including the Department of Health and Human Services
10 (Nevada State Medicaid Recovery Unit), are furnished with notice. The Special
11 Administrator, ROMEO SMITH, shall proceed to file the same within forty-five (45)
12 days of the date of this Order. The Court directs counsel for Petitioner to handle
13 the set-aside proceeding for costs only, and no further probate fees, based on the
14 ample recovery of fees under the civil action and the fact that the sole heir is a
15 minor child.
16
17

18 DATED this 12 day of July, 2017.

19
20 IT IS SO RECOMMENDED.


PROBATE COMMISSIONER

21
22 IT IS SO ORDERED.


DISTRICT JUDGE

1 CASE NO. PR17-00074

2 **CERTIFICATE OF SERVICE**

3 I certify that I am an employee of the Second Judicial District Court of the State
4 of Nevada, County of Washoe; that on the 13th day of July 2017, I electronically filed
5 the **ORDER AUTHORIZING SPECIAL ADMINISTRATOR TO ACCEPT SETTLEMENT**
6 **OF ESTATE CLAIM; ORDER FOR FURTHER PROBATE PROCEEDINGS** with the
7 Clerk of the Court by using the ECF system.

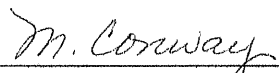
8 I further certify that I transmitted a true and correct copy of the foregoing
9 document by the method(s) noted below:

10 Personal delivery to the following: **NONE**

11 Deposited in the Washoe County mailing system for Postage and Mailing with
12 the United States Postal Service in Reno, Nevada: **NONE**

13 Electronically filed with the Clerk of the Court by using the ECF system, which
14 will send a notice of electronic filing to the following:

15 **LUKE BUSBY, ESQ. for ROMEO SMITH**

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21 
22 M. Conway, Probate Court Clerk
23
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